IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned On-Briefs to the Western Section of the Court of Appeals on
March 30, 2007

HATTIE WILLIAMS v. METROPOLITAN POLICE DEPARTMENT

A Direct Appeal from the Chancery Court for Davidson County
No. 03-3150-1 The Honorable Claudia Bonnyman, Chancellor

No. M2005-00937-COA-R3-CV - Filed on May 2, 2007

Appellee Metropolitan Police Department terminated the employment of Employee/Appellant for violation of internal policies concerning work place harassment. The decision was upheld by the Civil Service Commission. Employee/Appellant appealed to the Davidson County Chancery Court, which court upheld the Commission's decision. Employee/Appellant appeals. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

Hattie Williams, Pro Se

Susan T. Jones and Rita Roberts-Turner of Nashville, Tennessee for Appellee, Metropolitan Police Department

OPINION

Hattie Williams ("Appellant") an employee of the Metropolitan Police Department ("MPD," or "Appellee") served as Assistant Police Operations Supervisor in the Central Records Division, with supervisory authority over other employees of that division.

Ulyssess Hernandez, who is of Cuban decent, entered training at the MPD Academy in August of 2000. After three weeks in the Academy, Mr. Hernandez was injured, and the MPD assigned him to the Central Records Division, where Ms. Williams was his supervisor. Mr. Hernandez's primary responsibility was to scan reports into the computer system. He was also asked by ranking officers to assist others with the computer system. Mr. Hernandez is bilingual and, as such, he was allowed by superior ranking officer to use this skill to assist Spanish speaking members of the public. The record reveals that Ms. Williams, as Mr. Hernandez's supervisor, was displeased with his assisting Spanish speaking members of the public and preferred for Mr. Hernandez to scan reports. Ms. Williams also disproved of the pay Mr. Hernandez received. Although Ms. Williams never issued a write-up nor otherwise addressed Mr. Hernandez, she perceived his work to be inadequate. During Mr. Hernandez's tenure with the division, Ms. Williams was aware that staff members made offensive comments to Mr. Hernandez about his clothing, and referred to him as "Elian," in reference to the international incident involving a child from Cuba (which was a current event at the time). Ms. Williams did not intervene to stop the teasing and name-calling. Ms. Williams was also aware that Mr. Hernandez referred to some of his co-workers derogatorily as "gringo" or "gringa;" yet she did nothing to address this problem.

Eventually, Mr. Hernandez submitted a written complaint alleging a hostile work environment. After she was presented with the complaint letter, Ms. Williams made copies of the letter and distributed them to other employees in the Central Records Division. The charges in Mr. Hernandez's complaint were investigated and, in July of 2001, the Chief of Police for the MPD charged Ms. Williams with violating the following:

> 1. General Order 99-8 Harassment and Discrimination Section V, A (2)–Employee shall not make offensive or derogatory comments to a person either directly or indirectly, based on race, color, gender, religion, age, disability, sexual orientation, or national origin.
>
> 2. General Order 99-8 Harassment and Discrimination Section V, B (1)(C)–Stopping any observed acts that may be considered harassment and/or discrimination, and taking appropriate steps to intervene, whether or not the involved employees are within his/her line of supervision.
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> 3. General Order 99-8 Harassment and Discrimination Section VI–The complaining party's confidentiality will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances.
>
> 4. Civil Service Rule, Chapter 6, Section 6.7–Violation of any written rules, policies or procedures of the department in which the employee is employed.

A disciplinary hearing was held on August 1, 2001, which hearing was chaired by former Assistant Chief of Police Judy Bawcum. The charges against Ms. Williams were sustained, and she was terminated from her employment with the MPD. On or about August 15, 2001, Ms. Williams appealed the decision to the Civil Service Commission (the "Commission"). The Administrative Law Judge ("ALJ") held a hearing on December 11 and 12, 2002, and upheld the termination of Ms.

Williams's employment. Specifically, the ALJ found that Ms. Williams had violated General Order 99-8, Section V,B(1)(C) because she had not intervened to stop acts of harassment toward Mr. Hernandez that she had personally observed. The ALJ also found that Ms. Williams had violated General Order 99-8, Section VI by making copies of Mr. Hernandez's complaint and disseminating those copies in the office.

Ms. Williams appealed the ALJ's findings to the Commission, which reviewed the matter on July 8, 2003 and deferred to the Commission's next meeting on August 12, 2003. At that meeting, the Commission reviewed the entire record and heard arguments. The Commission upheld the termination of Ms. Williams's employment.

Ms. Williams filed a timely appeal with the Davidson County Chancery Court, wherein Ms. Williams alleged that: (1) the decision of the Commission was arbitrary and capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion; and (2) that the decision of the Commission was unsupported by evidence which is both substantial and material in light of the entire record. On November 12, 2003, the Metropolitan Government responded denying the allegations.

The matter was heard on March 18, 2005. On May 31, 2005, the trial court found that there was material and substantial evidence to support the decision of the Commission, and entered its Memorandum and Order upholding the termination of Ms. Williams's employment. Ms. Williams appeals

We note at the outset that Ms. Williams's brief does not comport with Tenn. R. App. P. 27. That being said, the Appellee herein does not raise an issue regarding the shortcomings of Ms. Williams's brief. Pursuant to the authority granted this Court in Tenn. R. App. P. 2, and in the interest of expediting this matter, we suspend Tenn. R. App. P. 27 in this case and perceive Ms. Williams's issues on appeal to be the same as raised at the trial level, to wit:

> 1. Whether the findings of the Commission are arbitrary or capricious?
>
> 2. Whether substantial and material evidence exists in the record to support the Commission's decision to uphold the termination of Ms. Williams's employment?

The scope of this Court's review of the decision of the Commission is the same as the trial court's and is set out at T.C.A. §27-9-114(b)(1):

> (b)(1) Judicial review of decisions by civil service boards of a county or municipality which affects the employment status of a county or city civil service employee shall be in conformity with the judicial

> review standards under the Uniform Administrative Procedures Act, § 4-5-322.

The relevant portion of the Uniform Administrative Procedures Act, T.C.A. § 4-5-322(h), provides:

> (h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
> (5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.
> (B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

We have reviewed Ms. Williams's brief, and it appears that she is not challenging the constitutionality of the proceedings against her. Rather, she disagrees with the Commission's factual findings and, consequently, appears to be challenging the decision on the ground that same was arbitrary and capricious and/or unsupported by material evidence in the record.

It is well settled that a board's determination is arbitrary and void if it is unsupported by any material evidence. ***Watts v. Civil Serv. Bd. of Columbia***, 606 S.W.2d 274, 276-77 (Tenn.1980). Whether material evidence supports the board's decision is a question of law to be decided by the reviewing court based on the evidence submitted to the board. ***Id.*** at 277. Our review of the trial court's conclusions on matters of law is ***de novo*** with no presumption of correctness. ***Bowden v. Ward***, 27 S.W.3d 913, 916 (Tenn.2000); Tenn. R. App. P. 13(d). However, as set out above, this Court's scope of review of the board's determination "is no broader or more comprehensive than that of the trial court with respect to evidence presented before the [b]oard." ***Watts***, 606 S.W.2d at 277. Although T.C.A. § 4-5-322 does not clearly define "substantial and material" evidence, courts generally interpret the requirement as requiring "something less than a preponderance of the evidence, but more than a scintilla or glimmer." ***Wayne County v. Tennessee Solid Waste Disposal Control Bd.***, 756 S.W.2d 274, 280 (Tenn.Ct.App.1988) (citations omitted). While this Court may consider evidence in the record that detracts from its weight, the court is not allowed to substitute its judgment for that of the agency concerning the weight of the evidence. See T.C.A. § 4-5-322(h), ***Pace v. Garbage Disposal Dist.***, 390 S.W.2d 461, 463 (Tenn. Ct. App. 1965). The evidence before the tribunal must be such relevant evidence as a reasonable mind might accept as adequate to support the rational conclusion and such as to furnish a reasonably sound basis for the actions under consideration. ***See Pace***, 390 S.W.2d at 463.

As set out above, the ALJ, Commission, and trial court determined that Ms. Williams had violated General Order 99-8, Section V, B (1)(C) in failing to intervene to stop harassment against Mr. Hernandez, and General Order 99-8, Section VI in providing copies of Mr. Hernandez's complaint letter to other employees. Turning to the record in this case, Ms. Williams testimony before the ALJ indicates that she knew that certain employees, under her supervision, were calling Mr. Hernandez names and making fun of the way he dressed. Furthermore, Ms. Williams admits that she knew that Mr. Hernandez was also guilty of referring to his co-workers by derogatory names. Assistant Chief Judy Bawcum testified that, as a supervisor, Ms. Williams was charged with the duty of making sure that the work environment remained pleasant and professional. The record supports the finding that Ms. Williams failed in this duty by not intervening to stop the name calling both against and by Mr. Hernandez.

Concerning violation of General Order 99-8, Section VI, Ms. Williams admits that she made copies of Mr. Hernandez's complaint and distributed same to other workers, to wit:

> Q [to Ms. Williams]: Now in terms of distributing his [Mr. Hernandez's] February 22nd letter, copying and distributing that...did you copy Mr. Hernandez's complaint letter?
>
> A. Yes, I did.

Although Ms. Williams protests that this complaint letter was not marked confidential, Lieutenant Desmond Carter testified that Ms. Williams was advised of the complaint against her and was specifically told not to discuss it with anyone. Ms. Williams does not dispute Mr. Carter's testimony but, as set out above, admits to copying and distributing the letter. This admission supports a finding that Ms. Williams violated General Order 99-8, Section VI.

Because there is sufficient evidence in the record to support the finding that Ms. Williams violated both Section VI, and Section V, B (1)(C) of General Order 99-8, the Commission was also correct in finding that Ms. Williams violated Chapter 6, Section 6.7 of the Rules of the Civil Service Commission, which rule allows discipline to be imposed for "[v]iolation of any written rules, policies or procedures of the department...."

Based upon the foregoing, we affirm the Order of the trial court upholding the termination of Ms. Williams's employment. Costs of this appeal are assessed against the Appellant, Hattie Williams, and her surety.

W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.